IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 19294 of 2007(V)

PETITIONER:

PREETHA.S., W/O AJITHKUMAR,
AGED 35 YEARS, DEEPU VIHAR, KALLELIBHAGAM,
KARUNAGAPPALLY, QUILON DISTRICT, PIN-690 546.

BY ADV. SRI.M.R.HARIRAJ

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY, PUBLIC WORKS DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR, KOLLAM.

3. THE TAHSILDAR, TALUK OFFICE, KARUNAGAPPALLY.

4. VILLAGE OFFICER, VILLAGE OFFICE, KALLELI BHAGAM, KARUNAGAPPALLY.

5. ASSISTANT ENGINEER, PUBLIC WORKS DEPARTMENT ROADS SECTION, KARUNAGAPPALLY.

BY GOVT. PLEADER SRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO. 19294 OF 2007 - V

Dated this the 2nd day of August, 2007

J U D G M E N T

The petitioner challenges Ext.P5 notice. By Ext.P5 notice, the petitioner has been directed to vacate certain properties without specifying the identity of the properties or without specifying as to the provisions of law under which the notice has been issued. The contention of the petitioner is that if the same is under the Kerala Highway Protection Act, the Assistant Engineer is not empowered to issue such notice. If the same is under the Kerala Land Conservancy Act, then also the Assistant Engineer is not competent to exercise jurisdiction. The petitioner therefore seeks quashing of Ext.P5.

2. I have heard the learned Government Pleader. He could not satisfy me that Ext.P5 has been issued after complying with the principles of natural justice. In the above circumstances, normally, Ext.P5 would be liable to be quashed, but if the same is treated

as a show cause notice, this need not be done. Now that the petitioner has filed Ext.P6 objection to Ext.P5, the fifth respondent shall consider the same as a show cause notice to which Ext.P6 objection has been filed. Therefore, the fifth respondent shall now grant an opportunity of being heard to the petitioner with liberty to adduce evidence also and pass a speaking order specifically dealing with the contentions of the petitioner, particularly the contentions regarding want of jurisdiction on the part of the fifth respondent to issue Ext.P5. The petitioner shall not be evicted from the property pursuant to Ext.P5 until after two weeks of communication of the orders to be passed by the fifth respondent as directed above. This is without prejudice to the contentions of the petitioner in the suit which is stated to have been filed in respect of the property in question.

The writ petition is disposed of as above.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007